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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,917

05/25/2005

Terrence John Mehan

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STEPTOE & JOHNSON LLP
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EXAMINER

TYLER, STEPHANIE E

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

09/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,917	Applicant(s) MEHAN, TERRENCE JOHN	
	Examiner STEPHANIE E. TYLER	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-16 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/23/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species III, Figs.1(e), (f) and claims 1-7,9,10 in the reply filed on 8/8/2008 is acknowledged.
2. Claims 8,11-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/08/2008.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In particular, the abstract is over 150 words. Correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3754

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3,6,7,9,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Livingstone (2,743,844).

The Livingstone reference discloses in figure 4 a dispenser device body (fig.4) having an inlet end (aperture near 46) and an outlet end (40); a transport passage (44) arranged therebetween, wherein the cross-sectional internal dimensions at the inlet end (aperture near 46) of the transport passage are smaller than the cross-sectional internal dimension at the outlet end (40) of the transport passage (44); at least two sealing connector sections (upper and lower threads of 41), located at or near the inlet and outlet ends respectively; and wherein the sealable connection (upper and lower threads of 41) between the dispenser device (fig.4) and the unfilled vessel provides a substantially air tight seal; and wherein the sealable connecting section (upper and lower threads of 41) is in the form of threaded portions, which correspond to the connector surface of the unfilled vessel; and wherein a contour formed by an inner wall of the transport passage (44) differs from the contour formed by an exterior wall (upper outer wall of 41 and 44) of the transport passage (44); and wherein an exterior wall (upper outer wall of 41 and 44) of the transport passage is shaped to correspond to an inlet or access portion of any one of a plurality of unfilled vessels having access or inlet portions of differing diameters or shapes, the exterior wall (upper outer wall of 41 and 44) thereby incorporating the sealable connector section; and wherein the dispenser device body (fig.4) is constructed from suitable plastic (col.2, lines 2,3) ; and wherein

Art Unit: 3754

the device (fig.4) is constructed from one material (col.2, lines 2,3). Also Livingstone discloses the functional language claimed limitations.

6. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (5,762,120).

The Smith reference discloses a dispenser device body (120) having an inlet end (aperture near 126) and an outlet end (aperture at 110); a transport passage (passageway between elements 126 and 110) arranged therebetween, wherein the cross-sectional internal dimensions at the inlet end (aperture near 126) of the transport passage are smaller than the cross-sectional internal dimension at the outlet end (aperture at 110) of the transport passage (passageway between elements 126 and 110); at least two sealing connector sections (160), located at or near the inlet and outlet ends respectively; and wherein the an inner surface of an inner wall of the transport passage (passageway between elements 126 and 110) is a continuous generally smooth tapered configuration, tapering outwardly from the inlet end (aperture near 126) towards the outlet end (aperture at 110). Also Smith discloses the functional language claimed limitations.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3754

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (5,762,120).

The transport passage including rounded shoulders at its inlet end is a design choice based upon the needs of the consumer and/or the manufacturer that will be operating the dispenser device. Having the shoulders rounded or square does not affect the utility of the dispensing device; and therefore fails to be patentably define over the prior art.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Hester (3,400,865), Bradley (4,273,166), Smith et al. (5,295,981), and Bliss (6,209,737) are other various types of dispenser devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. TYLER whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. T./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754